NEW YORK STATE SUPREME COURT
COUNTY OF NASSAU

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| MONICA ORTIZ, on behalf of herself and other individuals similarly situated,<br>Plaintiffs,<br><br>against<br><br>GPB CAPITAL HOLDINGS, LLC; AUTOMILE HOLDINGS LLC D/B/A PRIME AUTOMOTIVE GROUP; DAVID GENTILE; DAVID ROSENBERG; PHILIP DELZOTTA; JOSEPH DELZOTTA; and other affiliated entities and individuals,<br><br>Defendants. | Case No.<br><br>**CLASS ACTION COMPLAINT**<br><br>JURY TRIAL DEMANDED |

Named Plaintiff MONICA ORTIZ (hereinafter "Plaintiff"), individually and on behalf of all others similarly situated, along with Jane Does and John Does (hereinafter "Plaintiffs), by her attorneys, allege the following upon information and belief, except for those allegations pertaining to Plaintiff, which are based on personal knowledge:

## NATURE OF THE ACTION

1. This action seeks to remedy the deceptive and misleading business practices of GPB CAPITAL HOLDINGS, LLC, AUTOMILE HOLDINGS LLC D/B/A PRIME AUTOMOTIVE GROUP, DAVID GENTILE, DAVID ROSENBERG, PHILIP DELZOTTA, JOSEPH DELZOTTA (hereinafter "Defendants") with respect to the marketing, sale, and/or leasing of automobiles and the financial and credit products related to the same (hereinafter "Products") throughout the State of New York.

2. Defendants have orchestrated several deceptive and discriminatory consumer practices that target and manipulate their customers, including minorities and protected buyers,

purchasers, or leasers of automobiles at Defendants' locations in New York State, including the location commonly known as Garden City Nissan.

3. Defendants also engaged in at least eight deceptive schemes aimed at profiting from customers through omitting material information or misrepresenting the nature of the transactions to customers when those customers purchased, leased, or sold automobiles and financial products related to the same from Defendants.

4. Customers like Plaintiffs would not have purchased the Products if Defendants had truthfully disclosed all material terms about the Products, the extension of credit and the financing terms related to the same.

5. Defendants had a duty to disclose the true nature of the financial and credit transactions to Plaintiffs, and knowingly failed to disclose the proper terms, omitted material information, and presented false information to Plaintiffs when they purchased, leased, or obtained automobiles from Defendants' dealerships.

6. Defendants engaged in at least two systematic fraudulent rebate schemes that resulted in Defendants maintaining the benefits of those rebates, instead of passing it along to the customers, like Plaintiffs.

7. For example, Defendants manipulated credit applications and other submissions to other business entities, including car manufacturers to obtain rebates from those business entities and/or manufacturers. However, instead of properly advising customers of their eligibility for said rebates and providing the customers with those rebates when obtained, Defendants claimed the benefits of those rebates for themselves and failed to advise customers of the financial arrangements. This typically involved adding after-market products that were more profitable to the Defendants such that the customer was not aware of the added profits or the availability of

rebates that customer could claim for themselves.

8. Defendants falsified and altered documents to obtain the "NER" and "College Graduated" rebates for themselves, instead of providing those benefits to the customers.

9. Defendants engaged in a systematic fraudulent scheme whereby they failed to disclose that "certified used cars" did not actually qualify as "certified" under the manufacturer's specifications. Therefore, customers purchased automobiles that they believed to be certified when those cars were not actually certified. Thus, those automobiles were less valuable, more prone to repairs, more dangerous to drivers and a danger to the public health and safety.

10. Defendants also engaged in no less than five fraudulent schemes aimed at minority and protected customers, including schemes implemented through its "Special Finance Department."

11. Each fraudulent scheme resulted in Defendants obtaining profits it otherwise was not entitled to by placing those customers in financial situations that harmed them in several material ways.

12. Defendants also offered worse financial conditions to minorities, including by maximizing interest rates without disclosing to those customers that they were eligible for lower interest rates. The rates payable by and charged to racial and ethnic minorities' vehicle purchases at Defendants' dealerships were worse than their non-minority counterparts.

13. Plaintiff and those similarly situated customers purchased, leased, or sold automobiles or financial products related to automobiles at Defendants' dealerships, including at Garden City Nissan ("Class Members").

14. Plaintiffs unknowingly were cheated out of monies by Defendants' fraudulent schemes and would not have purchased such Products or services had Defendants truthfully

revealed material information about those Products, including the automobiles, available financing options, or related credit services.

15. Given that Plaintiff and Class Members paid a premium for the Products based on Defendants' material omissions, misrepresentations, and misdeeds, Plaintiff and Class Members suffered an injury in the amount of the premium paid, the rebates never received, the extra interest added, the credit harm done by Defendants, the fees and fines associated with repossession, other damages, and the various fees paid by Plaintiffs to Defendants.

16. Defendants' conduct violated and continues to violate, *inter alia*, New York General Business Law §§ 349 and 350, as well as New York State laws that protect minority purchasers or minority individuals that are applying for credit terms.

17. Defendants have been and continue to be unjustly enriched.

18. Plaintiffs were third parties that failed to receive the benefit of the bargain between Defendants and its manufacturers regarding rebates.

19. Accordingly, Plaintiff brings this action against Defendants on behalf of herself and Class Members who purchased the Products during the applicable statute of limitations period.

## FACTS

20. Car dealerships, like those owned, operated, and managed by Defendants here, typically operate out of three primary departments: (1) the sales department, (2) the finance department, and the (3) maintenance department.

21. Traditionally, the sales department negotiates pricing, availability of automobiles, and packages related to a specific car purchase or lease, and the finance department handles interest rates, loans, credit applications, and rebates.

22. Once the financial terms are agreed upon, the dealership sells the transaction as

commercial paper to financing institutions (i.e. Nissan Motor Acceptance Corp. or banks).

23. Given the prevalence of websites and third-party applications like TrueCar, AutoTrader, Cars.com, Carvana, and Vroom, car dealerships like those operated by Defendants increasingly rely on the finance side of their business to earn profits – as customers have become more knowledgeable about market trends and the prices of automobiles sold in specific geographic regions.

24. These third parties collect data on car sales and publish it publicly such that the public and customers can better know if the price they are prepared to pay for a specific car is a good, great, or poor value – compared with what other similar cars have sold for recently.

25. Effectively, traditional dealerships have a harder time making profits on the sales side because these third parties have entered the market, so dealerships make it up on the finance side and by increasing volume.

26. Financing departments may earn profits by increasing interest rates from lending institutions or adding aftermarket products like warranties or services provided by the dealership's maintenance department or other add-ons. For example, a dealership may attempt to include add-ons like rustproof, key replacement protections, wheel protections, exterior paint protection, fabric protectants, service contracts, credit insurance, car wash programs, or gap insurance. Those products can either be negotiated by price or "packed" or "loaded" into the deal when the dealership intentionally quotes a higher price and then builds in those add-ons during financing process – without the customer's knowledge.

27. Most frequently Prime Protection, the network car wash program, and wheel/tire protection plans were the most packed aftermarket products, as the costs to the dealership and Defendants were minimal.

28. Effectively by quoting the higher price, the dealership has greater flexibility in making a profit on the finance side – without disclosing the loading or packing schemes.

29. Manufacturers also want to incentivize dealerships and its staff to make sales or finalize leases, so manufacturers enter into arrangements with dealerships to provide them rebates for specific types of sales or leases or provide dealer cash for the sale of specific cars. For example, a manufacturer may offer $1,000 rebate to a dealership if they sell an automobile to a repeat customer or $500 rebate if a recent college graduate buys an automobile made by the specific manufacturer. The rebate incentivizes the dealership to sell the automobile at a lower price.

30. During the relevant period, Defendants participated in two prominent rebate programs with its manufacturers: (i) the NER Rebate, and (ii) the College Graduate Rebate.

31. During the relevant period, Defendants submitted proof of entitlement to the manufacturers that customers, like Plaintiffs, were entitled to the NER Rebate and the College Graduate Rebate. Defendants then received those rebates from the manufacturer, but Defendants failed to pass the benefits of those rebates to the customers.

32. Defendants kept those rebates for themselves.

33. Plaintiffs, as customers, did not receive the benefits of those rebates. Instead, those rebates were not disclosed and additional – and highly profitable – aftermarket products were added onto the customer's deal without the customer's knowledge. For example, a customer may have been eligible for the NER Rebate and the College Graduate Rebate for a total of $1,500 in rebates, but Defendants did not advise the customer that the customer could take $1,500 off the negotiated price. Instead, Defendants led the customer to believe that he/she has received a bundle of aftermarket products like rustproofing, undercoating, protectants, protection plans, tire warranty, or bumper warranty. In effect, Defendants used the aftermarket products to keep the negotiated

price the same for the customer and then the dealership keeps the rebate as profit for themselves.

34. In other schemes, Defendants sold used cars at increased prices by omitting that those cars had not passed the manufacturer's qualifications for being deemed "certified."

35. Defendants falsified documents including the Certified Pre-Owned Warranty Certificate to increase the profitability of its used car sales.

36. Defendants provided the manufacturer and other parties with documents that identified automobiles sold by Defendants as "certified" when those automobiles did not properly qualify as certified under the manufacturer's plan.

37. Customers purchased automobiles that they believed to be certified and paid an increased price but received a used automobile that had service or maintenance issues that prevented it from being certified.

38. In other schemes, Defendants specifically targeted minority customers to increase profitably through the use of the schemes discussed above, as well as other schemes, including the (i) Fraudulent Trade Transfer Scheme, (ii) Kick Trades Scheme, (iii) Box Close Scheme, (iv) Transportation and Used Car Preparation Fee Scheme, and (v) 2% Mark-Up Scheme.

39. These schemes were implemented through the finance department and through the sale of commercial paper to financing institutions, including Nissan Motor Acceptance Corporation (NMAC).

40. In the Fraudulent Trade Transfer Scheme, Defendants would use a previously traded-in car to assign to another new customer to ensure that the new customer was eligible to purchase a specific automobile that he/she might not otherwise have qualified for.

41. In the Kick Trades Scheme, Defendants would fraudulently attempt to lure the customer into abandoning his/her old car so that they could purchase a new automobile or lease

that would increase the dealership profits. Defendants would not advise customers that they were effectively committing to voluntary repossession – wherein they would be required to pay fees, risk damaging their credit score, and would still be obligated under the prior contractual arrangement to pay for the old car. In some instances, under this scheme, the customer was told to tell the prior lender that the dealership authorized the old car to be picked up from the customer's home.

42. In the Box Close Scheme, Defendants would manipulate and fail to provide all disclosures to the customers to lure them in to entering a purchase or lease that was most profitable to the dealership – even if the customer was eligible for substantially lower payments or interest. In some instances under this scheme, the customers would have already cleaned out their old car, plate transfers had been initiated, and documentation was generated for the new automobile.

43. In the Used Car Preparation and Transportation Fee Scheme, Defendants would artificially inflate the fees by several thousand dollars on top of the advertised price for alleged preparation and transportation fees, even if the car was prepared and already located on the dealership's physical lot.

44. In the 2% Mark Up Scheme, Defendants increased customers APR or interest rate by 2% without disclosing to the customers that they were eligible for lower rates and that the dealership was receiving dealer reserve payments from the financing institution and/or NMAC (on the difference between what the customer was eligible for and what Defendants were able to induce the customer into).

45. In these schemes, Defendants regularly "packed" or "loaded" the aftermarket products into the customer's deal without their knowledge, so that the dealership could earn the profits.

46. Plaintiffs, like the Named Plaintiff, were subject to multiple schemes in the same purchases or leases and were substantially harmed by Defendants' schemes, including by the substantially identical omissions, acts, and misrepresentations.

## JURISDICTION AND VENUE

47. This Court has personal jurisdiction over Defendants because Defendants conducts and transact business in the State of New York, contract to supply goods and services within the State of New York, and supply goods within the State of New York.

48. Venue is proper because Plaintiff and many Class Members reside in Nassau County, and throughout the State of New York. A substantial part of the events or omissions giving rise to the classes' claims occurred in Nassau County.

49. Defendants' collection of fraudulent rebates exceeds $1,000,000.

## PARTIES

**Plaintiff Ortiz**

50. Plaintiff Monica Ortiz is an individual customer who, at all times material hereto, was a citizen of Nassau County and leased an automobile from Defendants' Garden City Nissan location in Nassau County during May 2018. Plaintiff Ortiz is a protected individual as a female minority of a Hispanic race, and her national origin is Chilean.

51. If Defendants properly disclosed the true nature of the financial transaction, then Plaintiff would not have entered into the transaction or would have sought out alternatives at a substantially lower price.

52. Plaintiff was eligible to receive a lower rate on interest and APR than she received,

but such information was never disclosed.

53. The Products Plaintiff received were worth less than the Products for which she paid. Plaintiff was injured in fact and lost money as a result of Defendants' improper conduct.

**Defendants**

54. Defendants jointly operate, own, and manage the dealership commonly known as Garden City Nissan during the relevant period. Each Defendants exercise considerable control over the business decisions and financial transactions that occurred between the corporate entities and the customers during the relevant period of time.

55. Upon information and belief, Defendants GPB Capital Holdings, LLC is a foreign limited liability company with a principal place of business in New York at 535 West 24th Street, 4th Floor, New York, NY 10011.

56. Upon information and belief, Defendants David Gentile is the owner, CEO, and operator of Defendants GPB Capital Holdings, LLC, and his principal business address is 535 West 24th Street, 4th Floor, New York, NY 10011.

57. Upon information and belief and during the relevant period of time, Defendants David Gentile and GPB Capital Holdings, LLC jointly operated and managed Defendants Automile Holdings LLC d/b/a Prime Automotive Group.

58. Upon information and belief, Defendants Automile Holdings LLC d/b/a Prime Automotive Group is a foreign limited liability company with a principal place of business at 375 Providence Highway, Westwood, Massachusetts, 02090.

59. Defendant David Rosenberg was, at all relevant times, the owner, CEO, and operator of Defendants Automile Holdings LLC d/b/a Prime Automotive Group and his principal business address is 375 Providence Highway, Westwood, Massachusetts, 02090.

60. Upon information and belief, Defendants David Gentile, Defendants GPB Capital Holdings, LLC, Defendants Automile Holdings LLC d/b/a Prime Automotive Group, Defendants David Rosenberg, Defendants Philip Delzotta, and Defendants Joseph Delzotta jointly owned, operated, and managed the dealership known as Garden City Nissan, located at 316 North Franklin St., Hempstead, New York 11550.

61. Defendants collective and separately operated other car dealerships in New York State during the relevant period of time including Tower Ford, White Plains Buick GMC, Huntington Nissan, and other locations.

62. Upon information and belief, each Defendants had knowledge of the illegal schemes and acts as detailed in this Complaint but failed to take any appropriate action to cease their ongoing violations.

63. During the summer and fall of 2019, all of Defendants were made aware of the ongoing and systematic fraudulent schemes being perpetrated against Defendants' customers and Defendants failed to take meaningful affirmative steps to cease the ongoing violations of consumer fraud law.

64. Upon information and belief, Defendants took affirmative steps to conceal and hide the existence and scope of consumer fraud and discrimination ongoing at its Garden City Nissan location.

65. Upon being advised of the various schemes and discrimination, Defendants elected to terminate the individuals that reported and refused to participate in the deceptive and illegal acts – only to reinstate the bad actors into positions of power to continue the deceptive and illegal schemes.

66. Despite the knowledge of these schemes as reported by its employees and third

parties, Defendants failed to advise customers of the illegal acts made against them and thereby perpetuated additional interest, fees, and damages to Plaintiffs and the Class.

## CLASS ALLEGATIONS

67. Plaintiff brings this matter on behalf of herself and those similarly situated. As detailed in this Complaint, Defendants orchestrated deceptive and discriminatory consumer practices that affected customers, their use, and purchase of Products, their credit, and their financial future.

68. Defendants' customers were impacted by and exposed to this misconduct.

69. Accordingly, this action is ideally situated for class-wide resolution, including injunctive and/or declaratory relief.

70. The Class is defined as customers who purchased the Products, including purchased, leased, or obtained financial services related to automobiles from Defendants during the Class Period ("Class").

71. Pursuant to the CPLR and case law on the same, the Court may create subclasses as necessary for individuals exposed to certain schemes and practices ("Subclasses").

72. The Class is properly brought and should be maintained as a class action under CPLR §§ 901, 902 satisfying the class action prerequisites of numerosity, commonality, typicality, and adequacy because:

73. Numerosity: Class Members are so numerous that joinder of all members is impracticable. Plaintiff believes that there are thousands of customers who are Class Members described above who have been damaged by Defendants deceptive and misleading practices.

74. Commonality: The questions of law and fact common to the Class Members

which predominate over any questions which may affect individual Class Members include, but are not limited to:

a. Whether Defendants is responsible for the conduct alleged which was directed at customers who purchased the Products;
b. Whether Defendants' misconduct set forth in this Complaint demonstrates that Defendants has engaged in unfair, fraudulent, or unlawful business practices with respect to the advertising, marketing, and sale of its Products;
c. Whether Defendants omitted material information or made misleading statements to the Class and the public concerning its Products;
d. Whether Defendants' material omissions and false statements concerning its Products were likely to deceive the public;
e. Whether Plaintiff and the Class are entitled to damages and injunctive relief;
f. Whether Plaintiff and the Class are entitled to money damages under the schemes and causes of action delineated below as to other Class Members.

75. Typicality: Plaintiff is a member of the Class. Plaintiff's claims are typical of the claims of each Class Member in that every member of the Class was susceptible to the same deceptive, discriminatory, and misleading conduct aimed at Plaintiff and purchased Defendants' Products. Plaintiff is entitled to relief under the same causes of action as the other Class Members.

76. Adequacy: Plaintiff is an adequate Class representative because her interests do not conflict with the interests of the Class Members she seeks to represent; her consumer fraud claims are common to all members of the Class and she has a strong interest in vindicating her rights; she has retained counsel competent and experienced in complex class action litigation and they intend to vigorously prosecute this action. Plaintiff has no interests which conflict with those of the Class. The Class Members' interests will be fairly and adequately protected by Plaintiff and her counsel. Defendants has acted in a manner generally applicable to the Class, making relief appropriate with respect to Plaintiff and the Class Members. The prosecution of separate actions by individual Class Members would create a risk of inconsistent and varying adjudications.

77. The Class is properly brought and should be maintained as a class action under

CPLR §§ 901, 902 because a class action is superior to traditional litigation of this controversy. Common issues of law and fact predominate over any other questions affecting only individual members of the Class. The Class issues fully predominate over any individual issue because no inquiry into individual conduct is necessary; all that is required is a narrow focus on Defendants' deceptive and misleading practices.

78. In addition, this Class is superior to other methods for fair and efficient adjudication of this controversy because, *inter alia:*

79. Superiority: A class action is superior to the other available methods for the fair and efficient adjudication of this controversy because:

a. The joinder of thousands of individual Class Members is impracticable, cumbersome, unduly burdensome, and a waste of judicial and/or litigation resources;
b. The individual claims of the Class Members may be relatively modest compared with the expense of litigating the claim, thereby making it impracticable, unduly burdensome, and expensive-if not totally impossible-to justify individual actions;
c. When Defendants' liability has been adjudicated, all Class Members' claims can be determined by the Class and administered efficiently in a manner far less burdensome and expensive than if it were attempted through filing, discovery, and trial of all individual cases;
d. This class action will promote orderly, efficient, expeditious, and appropriate adjudication and administration of Class claims;
e. Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action;
f. This class action will assure uniformity of decisions among Class Members;
g. The Class is readily definable and prosecution of this action as a class action will eliminate the possibility of repetitious litigation;
h. Class Members' interests in individually controlling the prosecution of separate actions is outweighed by their interest in efficient resolution by single class action; and
i. It would be desirable to concentrate in this single venue the litigation of all plaintiffs who were induced by Defendants' deceptive and discriminatory consumer practices.

80. Accordingly, this Class is properly brought and should be maintained as a class

action under CPLR §§ 901, 902 because questions of law or fact common to Class Members predominate over any questions affecting only individual members, and because a class action is superior to other available methods for fairly and efficiently adjudicating this controversy.

**INJUNCTIVE CLASS RELIEF**

81. CPLR §§ 901, 902 contemplate a class action for purposes of seeking class-wide injunctive relief. Here, Defendants have engaged in conduct resulting in misleading customers about its Products. Since Defendants' conduct has been uniformly directed at all customers, and the conduct continues presently, injunctive relief on a class-wide basis is a viable and suitable solution to remedy Defendants' continuing misconduct. Plaintiff would not have entered into the transaction had she been fully informed of the true financial nature of the transaction and would have explored other options related to the same product available at other dealerships.

82. The injunctive Class is properly brought and should be maintained as a class action under the CPLR, satisfying the class action prerequisites of numerosity, commonality, typicality, and adequacy.

83. The injunctive Class is properly brought and should be maintained as a class action under CPLR §§ 901, 902 because Plaintiff seeks injunctive relief on behalf of the Class Members on grounds generally applicable to the entire injunctive Class. Certification under CPLR §§ 901, 902 is appropriate because Defendants has acted or refused to act in a manner that applies generally to the injunctive Class (i.e. Defendants utilized the same schemes to obtain profits without properly advising Class Members).

84. Any final injunctive relief or declaratory relief would benefit the entire Injunctive Class as Defendants would be prevented from continuing its misleading and deceptive practices

and would be required to honestly disclose financing options, rebates, available interest rates, and possible repossession and harm to customers.

**FIRST CAUSE OF ACTION**
**VIOLATION OF NEW YORK GBL § 349**
**(On Behalf of Plaintiff and New York Subclass Members)**

85. Plaintiff repeats and re-alleges each and every allegation contained in all the foregoing paragraphs as if fully set forth herein as to herself and similarly situated individuals that were Defendants' customers.

86. New York General Business Law (GBL) § 349 declares unlawful "[d]eceptive acts or practices in the conduct of any business, trade, or commerce or in the furnishing of any service in this state . . ."

87. The conduct of Defendants alleged herein constitutes recurring, unlawful deceptive acts and practices in violation of GBL *§* 349, and as such, Plaintiff and Class Members seek monetary damages and the entry of preliminary and permanent injunctive relief against Defendants, enjoining it from omitting material information from customers and inaccurately describing, labeling, marketing, and promoting the Products.

88. There is no other adequate remedy at law.

89. Defendants misleadingly, inaccurately, and deceptively present its Products to customers.

90. Defendants had a duty to disclose the true financial terms of each transaction with Plaintiffs when they attempted to or actually purchased, leased, or obtained an automobile from Defendants' dealership.

91. Defendants failed to disclose Plaintiff and Class Members' eligibility for rebates

and that such rebates could be used to reduce the price of the purchase or lease. Defendants also failed to disclose to customers, like Plaintiff, that aftermarket products were added to their purchases or lease that added little value and those products could have been removed at great financial benefit to the customers.

92. Defendants failed to disclose that certified used cars had not met the manufacturer's certified check list because Defendants failed to make or document all necessary repairs. Defendants also failed to disclose that they had altered and misrepresented the nature of those used automobiles to third parties such as to obtain additional monies from customers.

93. Defendants also implemented various schemes including Fraudulent Trade Transfers, Kick Trades, Box Closes, Transportation and Preparation Fees, and the 2% Mark Up schemes to damage customers, like Plaintiff.

94. Defendants failed to disclose that Defendants were setting the interest rates, not the financing institutions, and that the dealership was receiving compensation from the financing institution based on the rate that was being set in the deal.

95. Defendants deceptive and misleading practices constitute a deceptive act and practice in the conduct of business in violation of GBL §349(a) and Plaintiff and Class Members have been damaged thereby.

96. As a result of Defendants' recurring deceptive acts and practices, Plaintiff and Class Members are entitled to monetary, compensatory, treble, and punitive damages, injunctive relief, restitution and disgorgement of all moneys obtained by means of Defendants' unlawful conduct, interest, attorneys' fees, and costs.

**SECOND CAUSE OF ACTION**
**VIOLATION OF NEW YORK GBL § 350**
**(On Behalf of Plaintiff and the New York Subclass Members)**

97. Plaintiff repeats and re-alleges each and every allegation contained in all the foregoing paragraphs as if fully set forth herein.

98. GBL § 350 provides, in part, as follows:

> False advertising in the conduct of any business, trade or commerce or in the furnishing of any service in this state is hereby declared unlawful.

99. GBL § 350(a)(1) provides, in part, as follows:

> The term 'false advertising, including labeling, of a commodity, or of the kind, character, terms or conditions of any employment opportunity if such advertising is misleading in a material respect. In determining whether any advertising is misleading, there shall be taken into account (among other things) not only representations made by statement, word, design, device, sound or any combination thereof, but also the extent to which the advertising fails to reveal facts material in the light of such representations with respect to the commodity or employment to which the advertising relates under the conditions proscribed in said advertisement, or under such conditions as are customary or usual . . .

100. Defendants frequently marketed its Products to customers, like Plaintiffs, that failed to disclose the true nature of the financial arrangements related to the Products.

101. Defendants had a duty to disclose the truthful and accurate terms available to Plaintiffs.

102. Defendants advertised prices to customers that were substantially lower than those available and then failed to disclose additional fees associated with preparation and transportation of the automobiles.

103. Defendants advertised interest rates and APR rates that then were inflated by the dealership during the financing process.

104. Class Members have been injured inasmuch as they relied upon the advertising and

paid a premium for the Products based on materially omitted information and information that was contrary to Defendants' representations. Accordingly, Plaintiff and Class Members received less than what they bargained and/or paid for.

105. Defendants' conduct constitutes multiple, separate violations of GBL § 350.

106. Defendants made the material omissions and misrepresentations described in this Complaint in Defendants' advertising.

107. Defendants' material misrepresentations were substantially uniform in content, presentation, and impact upon customers at large. Moreover, all customers purchasing the Products were and continue to be exposed to Defendants' materially deceptive advertising because of omissions and misrepresentations.

108. As a result of Defendants' recurring, unlawful deceptive acts and practices, Class Members are entitled to monetary, compensatory, treble and punitive damages, injunctive relief, restitution and disgorgement of all moneys obtained by means of Defendants' unlawful conduct, interest, attorneys' fees, and costs.

## THIRD CAUSE OF ACTION
## CUSTOMER DISCRIMINATION
## UNDER N.Y.S. EXECUTIVE LAW § 296

109. Pursuant to New York State Executive Law § 296, including § 296-a, it is illegal for any creditor or any officer, agent, or employee of any creditor to "discriminate against any such applicant because of the race, creed, color, national origin, sexual orientation, gender identity or expression, military status, age, sex, marital status, disability, or familial status of such applicant…"

110. Defendants are creditors, agents of creditors, officers of creditors, or employees of

creditors within the meaning of the statutes and case law.

111. Named Plaintiff and other similarly situated individuals are protected individuals based on being included in protected classes under the statutes and case law.

112. Pursuant to at least five illegal schemes, Defendants targeted and discriminated against minority purchasers, including African American and Hispanics customers, when those customers applied for credit via Defendants in the purchase or lease of an automobile from Defendants' dealerships.

113. Defendants failed to advise Named Plaintiff and other similarly situated individuals that they were entitled to receive interest rates at significantly lower amounts.

114. Defendants also failed to advise Named Plaintiff and other similarly situated individuals that Defendants were receiving financial incentives from financing institutions.

115. Defendants induced minority customers, like the Named Plaintiff, into purchasing or leasing automobiles by failing to disclose material information that would have prevented those customers from entering into those transactions.

116. Defendants targeted African American and Hispanic customers by funneling such individuals to specific finance personnel at Defendants' dealerships including through the Special Finance Department at Garden City Nissan, wherein such customers were not properly advised of their qualifying interest rates and were exploited into purchasing cars at inflated interest rates and amounts that benefited Defendants.

117. Additionally, Defendants implemented a "mark-up" policy for minority and protected purchasers that inflated the annual percentage rate by 2% and thereby generated dealer reserve payments from financing institutions.

118. Based on this mark-up policy, African American and Hispanic customers paid a

significant amount more than the mark ups paid by customers of other races and nations.

119. Plaintiff leased a car at a significantly higher interest rate and APR than what she was otherwise eligible for. As a result, Plaintiff, like other similarly situated individuals, was harmed in an amount to be determined at trial, injunctive relief, declaratory relief, plus damages, interest, attorney's fees, and costs.

**FOURTH CAUSE OF ACTION**
**COMMON LAW UNJUST ENRICHMENT**
**(On Behalf of Plaintiff and All Class Members in the Alternative)**

120. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

121. Plaintiff, on behalf of herself and other customers, brings a common law claim for unjust enrichment.

122. Defendants' conduct violated state law by advertising, marketing, and selling its Products while misrepresenting and omitting material facts, amongst other acts and omissions.

123. Defendants' conduct violated state law by discriminating against minority customers in the sale of its Products and in credit services related to the same, amongst other acts and omissions.

124. Defendants' unlawful conduct as described in this Complaint allowed Defendants to knowingly realize substantial revenues from selling its Products at the expense of, and to the detriment or impoverishment of, Plaintiff and Class Members, and to Defendants' benefit and enrichment. Defendants has thereby violated fundamental principles of justice, equity, and good conscience.

125. Plaintiff and Class Members conferred significant financial benefits and paid

substantial compensation to Defendants for the Products, which were not as Defendants represented them to be.

126. Under New York's common law principles of unjust enrichment, it is inequitable for Defendants to retain the benefits conferred by Plaintiff's and Class Members' overpayments.

127. Plaintiff and Class Members seek disgorgement of all profits resulting from such overpayments and establishment of a constructive trust from which Plaintiff and Class Members may seek restitution.

**FIFTH CAUSE OF ACTION**
**NEGLIGENT**
**MISREPRESENTATION**
**(On Behalf of Plaintiff and All Class Members)**

128. Defendants, directly, or through its agents and employees, made false representations, concealments, and non-disclosures to Plaintiff and Class Members about its Products, including available rebates, available interest rates, the true value of the Products, and process for obtaining the Products.

129. In making these false, misleading, and deceptive representations and omissions, Defendants knew and intended that customers would pay a premium for Defendants' Products over comparable Products, furthering Defendants' private interest of increasing sales for its Products and decreasing sales of Products that are offered by Defendants' competitors.

130. As an immediate, direct, and proximate result of Defendants' false, misleading, and deceptive statements and representations, Defendants injured Plaintiff and Class Members in that they paid a premium price for the Products.

131. In making the representations of fact to Plaintiff and Class Members described herein, Defendants have failed to fulfill their duties to disclose material facts about the Products. The failure to disclose the true nature of the Products was caused by Defendants' negligence and

carelessness.

132. Defendants, in making these misrepresentations and omissions, and in doing the acts alleged above, knew or reasonably should have known that the misrepresentations were not true. Defendants made and intended the misrepresentations to induce the reliance of Plaintiff and Class Members.

133. The Plaintiff and Class Members relied on these false representations and non-disclosures by Defendants when purchasing the Products, upon which reliance was justified and reasonably foreseeable.

134. As a result of Defendants' wrongful conduct, Plaintiff and Class Members have suffered and continue to suffer economic losses and other general and specific damages, including amounts paid for the Products and any interest that would have been accrued on these monies, all in the amount to be determined at trial.

## SIXTH CAUSE OF ACTION
## THIRD PARTY BENEFICIARY
## BREACH OF CONTRACT
**(On Behalf of Plaintiff and All Class Members)**

135. Defendants entered into contractual arrangements with its manufacturers to provide rebates to customers when those customers, like Plaintiff, validly qualified for such rebates.

136. Manufacturers, like Nissan Corp., provided those rebates to Defendants based on the submission of eligibility by Defendants.

137. Plaintiffs, including Class Members, did not receive those rebates because Defendants' staff added aftermarket products to offset the rebates.

138. Plaintiffs were not advised that they could accept those rebates and decline the aftermarket product, which they believed was being provided for free.

139. Defendants breached the contractual arrangement with its manufacturers and Plaintiff and Class Members were harmed.

140. Defendants elected to retain the rebate themselves and provide the customers with highly profitable aftermarket products that ordinarily would not have been purchased.

141. During internal investigations during the summer and fall of 2019, Defendants uncovered the rebate schemes. Instead of reimbursing all customers because of the rebate schemes, Defendants terminated the individuals involved in investigating the schemes and returned control of the processes to the alleged bad actors.

142. During the summer and fall of 2019, Defendants, its employees, and third-party vendors estimated the amount of total undistributed rebates, engaged in discussions with Nissan Corp., and obtained a release from Nissan Corp. that allowed Defendants to maintain the benefits of that scheme without distributing it to customers like Plaintiffs.

143. Plaintiffs were beneficiaries of that agreement and failed to receive any of the benefits of that agreement.

## DEMANDS FOR RELIEF

144. Plaintiff demands a trial by jury on all issues.

**WHEREFORE,** Plaintiff, on behalf of herself and the Class, pray for judgment as follows:

(a) Declaring this action to be a proper class action and certifying Plaintiff as the representative of the Class under CPLR §§ 901, 902;

(b) Entering preliminary and permanent injunctive relief against Defendants, directing Defendants to correct its practices and to comply with customer

protection statutes;

(c) Awarding monetary damages, including treble damages;

(d) Awarding punitive damages;

(e) Awarding Plaintiff and Class Members their costs and expenses incurred in this action, including reasonable allowance of attorney's fees for Plaintiff's attorneys and experts, and reimbursement of Plaintiff's expenses; and

(f) Granting such other and further relief as the Court may deem just and proper.

Dated: May 28, 2020
Carle Place, NY

**LEEDS BROWN LAW, P.C.**

**_____/s/_____**
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